

**MINUTES FOR REGULAR COMMISSION MEETING HELD MAY 14, 2012
BEGINNING AT 1:00 P.M. IN THE COMMISSION BOARD ROOM IN DUCHESNE,
UTAH**

Present

Commission Chairman Kirk J. Wood; Commissioner Kent R. Peatross, Commissioner Ronald Winterton, Deputy County Attorney Marea Doherty, Deputy Clerk Auditor Connie Sweat, and Commission Assistant BobbiJo Casper taking minutes of the meeting.

Opening Comments

Deputy Clerk Sweat offered the prayer. There were no other comments.

Pledge Of Allegiance

Any wishing to participate.

Public Comment

None.

Tax Deferrals – Treasurer

The commission reviewed the attached tax deferrals. Commissioner Peatross recused himself from this agenda item due to a possible conflict. Commissioner Winterton stated that this is for equipment that was attached to personal property that shouldn't have been attached. *Commissioner Winterton motioned to approve the tax deferrals as recommended by the Treasurer's Office. Chairman Wood seconded the motion. Both commissioners voted aye and the motion passed. Commissioner Peatross abstained from voting.*

Consideration Of Payment Vouchers

The commission reviewed vouchers # 121561 through 121618 dated May 14, 2012, in the amount of two hundred sixty five thousand seven hundred one dollars and sixty eight cents (\$265,701.68) as presented by Deputy Clerk Sweat. *Commissioner Peatross motioned to approve the vouchers as presented by the Clerk Auditor's Office. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of A Business License Application For Uinta Rock

Deputy Clerk Sweat stated that this business is in the Tabiona/Hanna area making and selling wholesale souvenirs out of calcite rock. This application has been approved by the Planning and Zoning Department. *Commissioner Peatross motioned to approve the business license application as presented. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of A Duchesne County Password Policy

Chairman Wood stated that we discussed this earlier in the Working Session with IT Department Head Kenyon Abbott. The purpose of this policy is to have secure passwords that would be harder to leak out to hackers and others. *Commissioner Winterton motioned to approve the Duchesne County Password Policy for computers as presented. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.*

Consideration Of A Board Appointments On The Cedarview/Montwell Special Service District Filling Two (2) Vacant Unexpired Seats

Chairman Wood stated that we discussed this with Lars Powell earlier in the Working Session and the procedures have not been followed that need to be done. This agenda item has been postponed until June 11, 2012 to give the board time to properly notice the vacancies.

Consideration Of Minutes For Regular Commission Meeting Held May 7, 2012

Commissioner Winterton motioned to approve the minutes as corrected. Commissioner Peatross seconded the motion. All commissioners voted aye and the motion passed.

Public Hearing- 1:30 P.M...

County Community Planning Administrator Mike Hyde joined the meeting at 1:30 P.M...

Consideration Of Ordinance No. 12-295, An Ordinance Amending Title 8, The Duchesne County Zoning Ordinance

Administer Hyde stated that he will present the Planning Commission's recommendation on this proposed ordinance. This goes back to the June 29, 2011 ruling by Summit County 3rd District Court Judge Keith A. Kelly regarding "Family/Group Living Homes for Individuals with Disabilities". After that ruling, the zoning ordinance was reviewed by former Deputy County Attorney Jonathan Stearmer, who prepared and recommended that the proposed ordinance be passed to ensure that the county complies with this court order. The proposed ordinance has also been reviewed by current legal counsel, Attorney Doherty. This takes away the county's ability to regulate the placement of these types of facilities for the disabled. These will be allowed anywhere that a single family dwelling is allowed in the county with the exception being the secure treatment facilities for court ordered type treatments, we will still regulate those. The Planning Commission held a public hearing on the proposal May 2, 2012. There were no comments for or against and the Planning Commission recommended unanimously that the commission approve this ordinance to bring us into compliance with the court order. Attorney Doherty stated that she has reviewed and approved the ordinance as proposed. Chairman Wood stated that there was no public present for testimony regarding this proposal, so the public hearing was closed.

ORDINANCE #12-295

AN ORDINANCE AMENDING TITLE 8, THE DUCHESNE COUNTY ZONING ORDINANCE

WHEREAS, as a result of litigation, Duchesne County must amend its zoning ordinance provisions that were found to be inconsistent with the Federal Fair Housing Act; and,

WHEREAS, the Duchesne County Planning Commission has conducted a public hearing regarding these proposed amendments and has recommended approval.

BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS that:

SECTION 1. The definitions of the following terms in Section 8-2-1 of Title 8 are amended or deleted as follows:

~~FAMILY: An individual or two (2) or more persons related by blood, marriage or adoption, living together in a dwelling unit, which may also provide meals or lodging for not more than four (4) additional persons living in the same dwelling unit; or a group of not more than five (5) persons who need not be related by blood or marriage, living together in a dwelling unit. Family shall include two (2) or more handicapped persons, as defined in the fair housing act of 1988, living as a single housekeeping unit.~~

~~RESIDENTIAL FACILITY FOR ELDERLY PERSONS: A facility as defined by Utah Code Annotated section 17-27a-103, as amended. A single family or multiple family dwelling unit that meets the requirements of Utah Code Annotated section 17-27a-515, but does not include a healthcare facility as defined by Utah Code Annotated section 26-21-2.~~

~~RESIDENTIAL FACILITY FOR PERSONS WITH DISABILITIES: A facility as defined by Utah Code Annotated 17-27a-103, as amended. residence:~~
~~A. In which more than one person with a disability resides; and~~
~~B.1. Is licensed or certified by the department of human services under Utah Code Annotated title 62A, chapter 2, licensure of programs and facilities; or~~
~~2. Is licensed or certified by the department of health under Utah Code Annotated title 26, chapter 21, the healthcare facility licensing and inspection act.~~

~~RESIDENTIAL TREATMENT FACILITY: A twenty four (24) hour group living environment for four (4) or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, rehabilitation or habilitation services for~~

~~persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.~~

SECTION 2. *The Table of Uses in Section 8-6-1 of Title 8 is amended to delete a land use as follows:*

	<u>A-5, A-10</u>	<u>A-2.5</u>	<u>R-1</u>	<u>R-1/2</u>	<u>C</u>	<u>I</u>
Residential Treatment Facility	CU (A-10	CU	X	X	CU	X
	Only)					

SECTION 3. Chapter 10 of Title 8 of the Duchesne County Code is amended as follows:

Chapter 10 ~~RESIDENTIAL TREATMENT AND~~ SECURE TREATMENT FACILITIES

[8-10-1: CONDITIONAL USE PERMIT REQUIRED:](#)

[8-10-2: APPLICATION FOR PERMIT:](#)

[8-10-3: CONDITIONS FOR ISSUANCE OF PERMIT:](#)

~~Residential treatment and secure~~ **Secure** treatment facilities will be permitted only upon the granting of a conditional use permit by the planning commission. The approval of a conditional use authorizing a ~~residential treatment or~~ secure treatment facility is transferable to other operators, providing there is a review of conditions between the planning director and the new owner. Further, purchasing parties must demonstrate compliance with all required state and federal licensing requirements.

8-10-2: APPLICATION FOR PERMIT:

All applications for a ~~residential treatment or~~ secure treatment facility must contain the following information, and no application will be considered complete which does not contain the following:

A. Name and address of the applicant.

B. Statement of ownership of the subject property executed by the owner or owner's agent.

C. Description of the property, including a legal description and address, and common means of identification.

D. Map of the boundaries of the parcel and each separate lot or parcel within three hundred feet (300') of the exterior boundaries thereof, together with a list of the names and addresses of the last known owners of public record of each parcel.

E. A statement indicating the precise manner of compliance with each of the applicable provisions of this title.

F. A statement from the appropriate regulatory agency concerning availability of public utilities, including culinary and irrigation water (including appropriate fire protection), power, sewage disposal and refuse disposal.

G. A detailed written description of the anticipated ages and total number of occupants of the facility, together with a diagram of the facility, including all separate rooms and the intended use of each room.

H. A detailed description of the number of intended staff and job descriptions for such staff.

I. A statement demonstrating the capability of the applicant, through liability insurance or other means (with the county named as an additional insured), to ensure timely restitution to any member of the public suffering damage as a result of intentional or negligent

conduct by members of the staff or residents of the facility. Said insurance shall be in an amount not less than that recommended by the county insurance carrier.

J. A statement demonstrating compliance with all required state and federal licensing requirements.

K. Police background check demonstrating all criminal convictions or pleas of nolo contendere, except those which have been expunged, for five (5) years prior to the date of application.

8-10-3: CONDITIONS FOR ISSUANCE OF PERMIT:

The planning commission may grant the conditional use permit provided that it is established that the proposed use is in accordance with the provisions of section [8-13-5-3](#) of this title.

SECTION 4. *Section 8-9-10 of Title 8 of the Duchesne County Code is amended as follows:*

8-9-10: RESIDENTIAL FACILITIES FOR ELDERLY PERSONS:

Such facilities may not operate as a business. A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility. Residential facilities for elderly persons shall:

A. Ownership: Be owned by one of the residents or by an immediate family member of one of the residents, or be a facility for which the title has been placed in trust for a resident;

B. Land Use Regulations: Be consistent with any existing, applicable land use ordinance affecting the desired location;

C. Occupation: Be occupied on a twenty four (24) hour per day basis by eight (8) or fewer elderly persons in a family type arrangement;

D. Structural, Landscaping Character: Be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;

E. Number Permitted: Be reasonably dispersed throughout the county (~~not more than 1 such facility per mapped section~~);

F. Prohibited Clients: Not house clients being treated for alcoholism or drug abuse; and

G. Voluntary Placement: Be for the placement of elderly persons on a strictly volunteer basis and not a part of, or in lieu of, confinement, rehabilitation or treatment in a correctional facility.

SECTION 5. *Section 8-9-11 of Title 8 of the Duchesne County Code is amended as follows:*

8-9-11: RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITY:

A. Requirements: Residential facilities for persons with a disability shall be **an outright permitted use throughout the county in all zones in which residential uses are allowed; however, they are required to**

1. Reasonably dispersed throughout the county (not more than 1 such facility per mapped section);

- ~~2. Occupied on a twenty four (24) hour per day basis by eight (8) or fewer disabled persons in a family type arrangement;~~
- ~~3. Required to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and~~
- ~~4. Capable of use as a residential facility for disabled persons without structural or landscaping alterations that would change the structure's residential character.~~

B. Substance Abuse Facilities: Residential facilities for persons with a disability that are substance abuse facilities and are located within five hundred feet (500') of a school shall provide, in accordance with rules established by the department of human services under Utah Code Annotated title 62A, chapter 2, licensure of programs and facilities:

1. A security plan satisfactory to local law enforcement authorities;
2. Twenty four (24) hour supervision for residents; and
3. Other twenty four (24) hour security measures.

C. Licensing; Monitoring: The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

1. For programs or entities licensed or certified by the department of human services, the department of human services as provided in Utah Code Annotated title 62A, chapter 5, services to people with disabilities; and
2. For programs or entities licensed or certified by the department of health, the department of health under Utah Code Annotated title 26, chapter 21, healthcare facility licensing and inspection act.

SECTION 6. *Section 8-13-5-3 of Title 8 of the Duchesne County Code is amended as follows:*

8-13-5-3: ~~RESIDENTIAL TREATMENT OR~~ SECURE TREATMENT FACILITIES:

A. Compatible Location: The location of the proposed use is compatible to other land uses in the general neighborhood.

B. Size of Site: The site is of sufficient size to accommodate the proposed use, together with all yards, open spaces, walls and fences, parking and loading facilities, and landscaping as required by this title.

C. Streets: The site shall be served by streets of sufficient capacity to carry the traffic generated by the proposed use.

D. Adverse Effects: The proposed use, if it complies with all conditions of which approval is made contingent, will not adversely affect other property in the vicinity or the general welfare of the county.

E. Setbacks:

1. A setback of at least five thousand two hundred eighty feet (5,280') from any building on the facility site to the nearest existing child daycare facility, preschool, place of religious assembly, private educational facility, public educational facility, or public park ~~or residential treatment facility~~. The establishment of such land uses within the specified setback area after the occupancy of a ~~residential treatment or~~ secure treatment facility shall not create nonconformity or be the sole cause for denial of a conditional use permit for the expansion of an existing treatment facility.
2. A setback of at least two thousand six hundred forty feet (2,640') from any building on the facility site to the nearest existing dwelling unit. The establishment of a dwelling unit within the specified setback area after the occupancy of a ~~residential treatment or~~ secure treatment facility shall not create nonconformity or be the sole cause for denial of a conditional use permit for the expansion of an existing treatment facility.

3. A setback of at least two hundred feet (200') from any building on the facility site to any facility property line.

F. Distance between Facilities: A spacing of at least five (5) miles between secure treatment facilities, measured from secure unit to secure unit.

G. Fencing or Walls:

- 1. ~~Residential treatment facilities: Design to be approved by the planning commission.~~
- 2. Secure treatment facilities: ~~Nonclimbable~~ **shall be provided with non-climbable** fencing or walls of a design approved by the Planning Commission.

SECTION 7. Severability.

If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only, and shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared invalid.

SECTION 8. Effective Date. *This ordinance shall become effective fifteen (15) days after publication.*

DATED this _____ day of _____, 2012.

ATTEST:

DUCHESNE COUNTY
BOARD OF COMMISSIONERS

Diane Freston
County Clerk/Auditor

Kirk J. Wood, Chairman

Ronald Winterton, Member

Kent R. Peatross, Member

-Entered back into Regular Commission Meeting at 1:35 P.M...

Commissioner Peatross motioned to adopt the findings of fact and conclusions of law recommended by the Planning Commission and Approve Ordinance No. 12-295 amending the Duchesne County Zoning Ordinance. Commissioner Winterton seconded the motion. All commissioners voted aye and the motion passed.

Adjournment

Chairman Wood adjourned the meeting at 1:37 P.M.

Read and approved this 21st day of May 2012.

Kirk J. Wood
Commission Chairman

Diane Freston
Clerk/Auditor

*Minutes of meeting prepared by BobbiJo Casper*_____